

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARK GOLDBERG,

Plaintiff,

-against-

STEIN SAKS, PLLC,

Defendant.

USDC SDNY
DOCUMENT
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DATE FILED: 4/26/2023

23-cv-3089 (MKV)

ORDER OF SERVICE

MARY KAY VYSKOCIL, United States District Judge:

Plaintiff, who is appearing *pro se*, brings this action under Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181, *et seq.* He also asserts pendant state law claims. By order dated April 17, 2023, the Court granted Plaintiff's request to proceed *in forma pauperis* (IFP), that is, without prepayment of fees.

DISCUSSION

A. Class Action

As a nonlawyer, Plaintiff can represent only his own interests. *See* 28 U.S.C. § 1654; *U.S. ex rel. Mergent Servs. v. Flaherty*, 540 F.3d 89, 92 (2d Cir. 2008) (“[A]n individual who is not licensed as an attorney may not appear on another person’s behalf in the other’s cause.”) (internal quotation marks and citation omitted); *Eagle Assocs. v. Bank of Montreal*, 926 F.2d 1305, 1308 (2d Cir. 1991) (noting that § 1654 “allow[s] two types of representation: ‘that by an attorney admitted to the practice of law by a governmental regulatory body, and that by a person representing himself’”).

Because a *pro se* litigant cannot assert claims on behalf of third parties, a *pro se* plaintiff cannot bring class action claims. *See Rodriguez v. Eastman Kodak Co.*, 88 F. App’x 470, 471 (2d Cir. 2004) (“[I]t is well established that ‘a *pro se* class representative cannot adequately represent

the interests of other class members.’’)) (citation omitted); *Chapman v. U.S. Dep’t of Justice*, 558 F. Supp. 3d 45, 49 (E.D.N.Y. 2021) (dismissing the plaintiff’s class action claims because he was “proceeding *pro se* and cannot bring a class action on behalf of others”). The Court therefore dismisses without prejudice any claims that Plaintiff is asserting on behalf of others.

B. Service on Named Defendant

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service.¹ *Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)).

To allow Plaintiff to effect service on Defendant Stein Saks, PLLC, through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (USM-285 form) for Defendant. The Clerk of Court is further instructed to issue a summons and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon Defendant.

If the complaint is not served within 90 days after the date the summons is issued, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service).

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

¹ Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summons and complaint until the Court reviewed the complaint and ordered that the summons be issued. The Court therefore extends the time to serve until 90 days after the date the summons is issued.

CONCLUSION


The Court dismisses without prejudice Plaintiff's class action claims on behalf of others.

The Clerk of Court is instructed to issue a summons for Defendant Stein Saks, PLLC, complete the USM-285 form with the address for this defendant, and deliver to the U.S. Marshals Service all documents necessary to effect service.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: April 26, 2023
New York, New York



MARY KAY VYSKOCIL
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES

1. Stein Saks, PLLC
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